STANDARD CHARTERED BANK, SINGAPORE

v.

FOOK CHOY AUDIO SDN. BHD.

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[SUIT NO. 24-714-86]
14 DECEMBER 1987

CIVIL PROCEDURE: *Summary Judgment - Order 14 RHC - Claim against defendant is for money owed on dishonoured bill of exchange - Plaintiff claims as holder for value against defendant as acceptor of said bill of exchange - Drawn by company incorporated in Singapore on defendant and payable to order of Chartered Bank - Whether Standard Chartered Bank and Chartered Bank are separate legal entities - Bill dishonoured on presentation - Issues raised on appeal - Plaintiff's capacity to sue Equitable defence of set-off and wrong calculation of exchange rate - Whether raised triable issues.*

This was an appeal against the decision of the learned Registrar who gave final judgment to the plaintiff on 2 July 1987 for the sum of RM32,733.79 with interest at 8% per annum from date of judgment until full realisation and costs. The plaintiff's claim against the defendant was for money owed on the dishonoured bill of exchange dated 17 January 1985.

Held:

[1] It is well-known fact and common knowledge that the Chartered Bank is now known as the Standard Chartered Bank all over the world and the Court can take judicial notice of this fact. Therefore, there cannot be any doubt in one's mind that the defendant was not misled at all by the plaintiff as to their legal status. In the circumstances, there was no merit on the issue raised as to capacity to sue.

[2] As to the second ground of appeal namely equitable defence of set-off, there was no triable issue raised by the defendant in the defence.

[3] Section 72(d) of the Bills of Exchange Act 1949 does not apply to a judgment debt and therefore the calculation of the exchange rate as at 2 September 1986 did not breach that the said s. 72(d).

[Appeal dismissed with costs.]

Cases referred to:
Barclays Bank Ltd. v. Aschaffenberger Zellstoffwerke A.G. [1967] 1 Lloyd's Rep 387

Legislation referred to:
Bills of Exchange Act 1949, ss. 19(1), 72(d).
Rules of the High Court 1980, O. 14.

Other source referred to:
Halbury's Laws of England, 4th Edn., Vol. 4, para. 489

For the plaintiff/respondent - Karin Lim Ai Ching; M/s. Presgrave & Matthews
For the defendant/appellant - Neoh Lay Choo; M/s. Tan, Yu & Co.

JUDGMENT

Mohamed Dzaiddin J:

This is an appeal against the decision of the learned Registrar who gave final judgment to the plaintiff on 2 July 1987 for the sum of RM32,733.79 with interest at 8% per annum from date of judgment until full realisation and costs.

The plaintiff's claim against the defendant is for money owed on the dishonoured bill of exchange dated 17 January 1985 together with interest and incidental charges. The plaintiff claims as holder for value against the defendant as acceptor of the said bill of exchange for S$45,750 drawn by Peter Loo Company Pte. Ltd., a company incorporated in Singapore on the defendant and payable to the order of the Chartered Bank within a period of 120 days after sight which said bill was accepted. However, when it became due, it was presented for payment on 15 April 1985 but was dishonoured. The plaintiff duly protested for non-payment. Subsequently, the defendant promised to make full payment which was partly paid leaving a balance which at the date of the signing of final judgement was RM32,733.79. On an application under O. 14 of the Rules of the High Court, the learned Registrar entered final judgment against the defendant.

Miss Neoh, for the defendant, raised three grounds of appeal, namely, on capacity to sue; equitable defence of set-off; and wrong calculation of exchange rate. Firstly, she submitted that "the holder for value" of said bill of exchange is the Chartered Bank and not the plaintiff. It is quite clear that the plaintiff in this suit is the Standard Chartered Bank, Singapore and that at the time the contract was made the Bank was known as the Chartered Bank. According to Counsel, they are a separate legal entity. Hence, it raises a triable issue. I think it is a well-known fact and common knowledge that the Chartered Bank is now known as the Standard Chartered Bank all over the world. This is a fact which this Court can take judicial notice of. There cannot be any doubt in one's mind that the defendant was not misled at all by the plaintiff as to their legal status. In the circumstances, I find there is no merit on this ground.

Secondly, Miss Neoh submitted that the defence has raised an equitable defence of set-off as per para. 7. This paragraph reads as follows:

> 7. As to para. 4 of the Statement of Claim the defendants aver that the payments were made on the understanding the defendants would be entitled to set the balance of the bill against the commissions and service allowance payable by the drawer.

In my opinion, the above defence was raised to fit in with the English Court of Appeal decision in *Barclays Bank Ltd. v. Aschaffenberger Zellstoffwerke A.G.* [1967] 1 Lloyd's Rep 387. An English company supplied the defendants, a German company, with machinery. Payment was by 18 bills of exchange drawn on the German company which accepted them. Barclays Bank agreed to finance the transaction, and bought the bills paying 73 per cent of their face value and agreeing that when the bills were met at maturity the balance of 27 per cent would also be paid to the company. In the event, the last two bills were dishonoured, the German company alleging late delivery and defective materials. The Bank, as holders for value, sought and obtained summary judgment on the bills, the Court not being aware of the fact that the Bank had not paid the face value of the bills. On appeal, the Court of Appeal held that while there was no defence in law to the claim for the full amount of the bills, a stay of execution would be granted of the 27 per cent for which the Bank was trustee for its customers. Clearly whilst the principle of law enunciated in the above case is that a defendant can raise any defence or set-off which he would have available against the person who was

really behind the transaction, the facts of that case are distinguishable with the present one. Here, according to the affidavit evidence of Mr. Gay Thiam Whatt, the Loan Officer of the plaintiff Bank (encl. 12), the acceptance of the bill by the defendant was a clear unconditional acceptance which was unqualified in clear and unequivocal terms. Even the protest deed (Exhibit 4) is clear that one Mr. Ong (a person in charge) had admitted he would pay up the said bill in two instalments. It appears that the defendant's Managing Director, Mr. Ong Tat Sam in his affidavit (encl. 11) had stated that the defendant was entitled to 3% commission of the total sales and services allowances from the drawer. On the basis of Mr. Gay's affidavit, I find the acceptance of the Bill is general within s. 19(1) of the Bills of Exchange Act 1949 (Act 204). For the above reasons, I am of opinion that the *Barclays Bank Ltd.* (*supra*) does not apply and in the event there is no triable issue raised by the defendant in the defence.

Lastly, Miss Neoh raised the question of rate of exchange. Under the particulars to para. 4 of the statement of claim the exchange rate of Malaysia Ringgit to the Singapore dollar was based on the prevailing rate as at 2 September 1986. According to Counsel, this is defective because it does not comply with s. 72(d) of the Bills of Exchange Act 1949. This sub-section provides that where the bill is drawn out of the Federation but payable in this country and the sum payable is not expressed in the currency of the Federation, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight-drafts at the place of payment on the day on which the instalment is payable. It should be noted that s. 72 applies to matters where a conflict of laws arises. According to a commentary in *Halsbury's Laws of England* "these special provisions in the statute are more in the nature of practical expedients suited to the convenience of special cases than attempts to meet the difficulty of a conflict of laws." 4th Edn. Vol. 4 para. 489. Therefore, in the present case, the debt incurred by the defendant was payable in Singapore dollars amounting to S$26,855.92 and the plaintiff was entitled to recover the judgment debt even without converting it to the ringgit. Yet, the plaintiff did calculate the sum in the ringgit at the exchange rate as at 2 September 1986. The plaintiff must have done this for convenience. In my judgment, the section does not apply to a judgment debt and therefore the calculation of the exchange rate as at 2 September 1986 does not breach s. 72(d) of the Act.

For the above reasons, this appeal is dismissed with costs.

Also found at [1988] 1 CLJ 364